STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MIA MARLENA WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
February 15, 2005

No. 251049
Wayne Circuit Court
LC No. 03-000159-01

Before: Murray, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from her conviction, following a bench trial, of second-degree murder, MCL 750.317. The trial court sentenced her to 144 to 240 months' imprisonment. We affirm.

I. Pertinent Facts

This case arises out of the stabbing death of Derrick Nard, defendant's former boyfriend. J.C. Williams, defendant's father, testified as follows: He lived with defendant and others at a home in Detroit. Before the stabbing incident, defendant and Nard had been seeing each other romantically for several years, and their relationship had been tumultuous at times. During the early morning hours of November 27, 2002, he heard Nard yelling at the Detroit home. He then saw Nard trying to crawl up some steps from the basement, stating "[defendant] stabbed me." Defendant screamed and asked if Nard was going to be okay.

Nard died soon after the stabbing occurred. A doctor testified that the stab wound was on Nard's back, going from back to front and from left to right in direction. The doctor indicated that she detected no drugs or alcohol in Nard's system.

The prosecutor played to the jury a tape of a 911 telephone call made from the home on the day in question. The caller stated that "[m]y daughter just stabbed her friend[.]" Loretta Williams, defendant's mother, admitted that she made this telephone call. Loretta testified that she had never witnessed Nard being abusive towards defendant.

Defendant's sister, Lisa Williams, testified that Nard had been physically abusive towards defendant in the past, but the trial court sustained the prosecutor's objection and struck the testimony from the record after the prosecutor argued that the abusive incidents were too

remote in time to be relevant. Lisa additionally testified that she heard a "commotion" on the night of the stabbing.

A police officer testified that he was dispatched to the scene of the stabbing and that, upon arriving at the home, he observed no injuries to defendant. He stated that it appeared to him that defendant had been drinking alcohol. He testified that defendant was screaming that "[Nard] had came [sic] at her with a knife and she somehow got it away from him and he got cut."

Tyria Hughey testified, for the defense, that she saw Nard hitting defendant and verbally abusing her in the summer of 2002. Hughey testified that, on another occasion during the summer of 2002, she heard "tussling" between defendant and Nard and then told Nard that defendant should be taken to the hospital.[1]

Defendant testified as follows: Nard drank and used drugs and was physically abusive towards her. He committed specific instances of physical abuse towards her in 2002. On the date of the stabbing, defendant became upset because she questioned him about his drug use. He threatened to beat her, threatened her with a knife, and called her a "black b____h." He grabbed her from behind while holding the knife, and he got stabbed during an ensuing struggle, while he was still behind her. She did not hold the knife herself during the struggle.

It was elicited that defendant's statement to the police after the incident was consistent with her trial testimony, although in the earlier statement she stated that Nard had been drinking during the night in question.

The court rejected defendant's self-defense theory and convicted defendant of second-degree murder. The court emphasized the police officer's testimony that defendant had screamed that she got the knife away from Nard. The court stated that "she got away from him. She no longer had an honest belief that she was going to be killed or seriously injured[.]" The court further stated, in part:

> [T]his Court is finding the Defendant guilty of murder in the second degree.
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> * * *
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> [I]t comes down to these salient points. No one heard the yelling and screaming and hollering that the Defendant describes; no one.[2] Ms. Lisa Williams did hear a slight commotion, but no one heard an argument. She didn't say argument. She said commotion. Nobody heard the confrontation to the degree that Ms. Williams said.

[1] Hughey's testimony was disjointed and somewhat unclear because of numerous hearsay objections made by the prosecutor during the testimony.

[2] As noted *supra*, J.C. Williams did testify that he heard Nard yelling that night.

> Ms. Williams' version is wholly inconsistent with where Mr. Nard was stabbed, especially with her in front of him.
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> Ms. Williams, again, is utterly contradicted by the fact that she said Mr. Nard was drinking.
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> [I]t's a difficult decision, but it's the only decision this Court can come to based on the evidence in this case.

II. Exclusion of Evidence

On appeal, defendant argues that the trial court erred by excluding several pieces of evidence. We review for an abuse of discretion a trial court's decision to admit or exclude evidence. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003).

Defendant contends that the trial court erred by excluding Tyria Hughey's testimony that, in May 2002, when she was in a vehicle with defendant and Nard, Nard threatened to kill defendant and threatened to run the vehicle into a building. The court struck this testimony from the record sua sponte, evidently because it did not pertain to an act of *physical* violence by Nard against defendant. Even assuming, arguendo, that the court erred in striking this testimony, no basis for reversal is apparent. As noted in *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999), a nonconstitutional error does not require reversal unless "it is more probable than not that a different outcome would have resulted without the error." Defendant testified about the same incident described in Hughey's stricken testimony.[3] Accordingly, we cannot conclude that a different outcome would have resulted if the testimony in question had not been stricken.

Defendant contends that the trial court erred in disallowing, as "too remote in time," testimony of physical abuse perpetrated against defendant by Nard in 1996 or 1997. This contention is without merit. Indeed, it was within the trial court's discretion to exclude evidence of violence that occurred five or six years before the stabbing incident. The court properly concluded that such evidence would not be relevant to the case at hand. See, generally, *People v Thomas*, 126 Mich App 611, 623; 337 NW2d 598 (1983) (court did not err in excluding "evidence of violent acts directed at defendant by the victim which had occurred more than 10 years prior to the killing").[4] Instead, the court properly exercised its power of discretion and allowed evidence of numerous violent acts by Nard against defendant that occurred in 2002. See

[3] Contrary to defendant's implication on appeal, defendant did not testify, in contrast to Hughey's testimony, that defendant had been drunk or under the influence of drugs during this incident in the vehicle. Instead, she testified that she had been arguing with defendant *about* his use of drugs.

[4] Although *Thomas* involved incidents that occurred ten years before the killing in that case, it nonetheless provides support for the trial court's decision in the instant case.

id. No error occurred. Even if the court *had* erred with respect to this issue, we would find the error harmless, given that evidence of later violent acts was admitted.[5] See *Lukity, supra* at 495.

Defendant contends that the trial court erred in excluding the cross-examination testimony from J.C. Williams that defendant had told him about an abusive incident perpetrated by defendant against her about five or six months before the stabbing. However, the record reflects that the court did *not* in fact exclude this testimony; it allowed J.C. to answer "[y]es" when asked "[d]id [defendant] ever tell you about [Nard] being abusive to her?"

It is possible that defendant wanted more information to be elicited – beyond a "yes" or "no" answer – about this abusive incident. However, defendant makes no attempt in her appellate brief to explain how additional testimony about the incident would have been admissible despite the evidentiary prohibition against hearsay. "A party may not announce a position on appeal and leave it to this Court to unravel or elaborate his claims." *People v Hicks,* 259 Mich App 518, 532; 675 NW2d 599 (2003). Defendant's argument is waived. Even if the argument had not been waived, we would find any error harmless, given the other testimony about abuse that *was* allowed into evidence by the trial court. *Lukity, supra* at 495.

Defendant lastly contends that the trial court erred in excluding evidence "about [defendant's] mental illness, the special school she went to, or the difficulties her parents had raising her due to her mental illness."[6] Defendant claims that "[t]hat evidence would have shown why [defendant] would have over reacted [sic] to an act of aggression by Mr. Nard." No basis for reversal is apparent. Indeed, defendant does not explain on appeal, nor is it apparent from the available record, *why* evidence of defendant's mental illness would have made her claim of self-defense more credible. As noted, "[a] party may not announce a position on appeal and leave it to this Court to unravel or elaborate his claims." *Hicks, supra* at 532. Defendant has not borne her burden of establishing her right to appellate relief.

III. Sufficiency of the Evidence

Defendant next argues that the prosecutor presented insufficient evidence to sustain her conviction. Specifically, she claims that there was insufficient evidence of malice and that she proved her claim of self-defense. As noted in *People v Perkins,* 262 Mich App 267, 268-269; 686 NW2d 237 (2004):

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[5] Defendant contends that evidence of earlier incidents of violence was relevant because it (the earlier violence) occurred when defendant was not under the influence of alcohol or drugs, whereas the later incidents occurred when Nard *was* intoxicated. She contends that this is relevant because it showed that Nard was violent even when sober (as noted *supra,* a doctor who examined Nard's body found no evidence of drugs or alcohol in his system). However, in contrast to defendant's argument, the testimony about the later incidents of violence did not limit them strictly to times when Nard was under the influence of drugs or alcohol.

[6] Defendant did testify, without objection by the prosecutor, that she received governmental monetary assistance because of "mental illness."

> When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record.

"Malice" is an element of the crime of second-degree murder. *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464.

The prosecutor sufficiently proved malice by presenting evidence that Nard suffered a severe stab wound that caused him to die shortly after being stabbed and that the stabbing occurred in Nard's back, in a position inconsistent with defendant's testimony about the incident. Given this evidence, the court made a proper inference, see *Perkins, supra* at 268-269, that defendant acted with malice in stabbing Nard. The court properly rejected defendant's theory of self-defense, given that defendant's testimony about the incident was inconsistent with the location of the stab wound and given the testimony by the police officer that defendant stated that "she somehow got [the knife] away from [Nard]."

Defendant suggests that the evidence more properly demonstrated her guilt of voluntary manslaughter, which requires that a killing occur in the heat of passion caused by adequate provocation. See *People v Sullivan,* 231 Mich App 510, 518; 586 NW2d 578 (1998). We disagree. There was insufficient evidence of an adequate provocation or that defendant acted in the heat of passion in stabbing Nard. Even if defendant's testimony could be construed as providing evidence of adequate provocation, the trial court did not find defendant's testimony concerning the incident to be credible, and it specifically stated that, "based on the Court's findings, there was no evidence . . . that this was a heat of passion situation that mitigates this." As stated in *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003), "[t]his Court will not interfere with the role of the trier of fact of determining the weight of the evidence or the credibility of witnesses." Accordingly, reversal is unwarranted.[7]

Affirmed.

/s/ Christopher M. Murray
/s/ Patrick M. Meter
/s/ Donald S. Owens

[7] We note that defendant objects to the manner in which the trial court framed its findings. We find no basis for appellate relief with respect to this issue. Indeed, defendant failed to preserve this issue by failing to raise it in the statement of questions presented for appeal. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000).